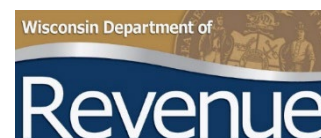


Wisconsin Tax Bulletin

April 2025 Number 229



If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, [subscribe to the mailing list](#) for sales and use tax or tax professionals.

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General Updates and Reminders

Wisconsin Voluntary Disclosure Program

The Wisconsin Department of Revenue encourages businesses and individuals who are not in compliance with Wisconsin tax laws to voluntarily come forward.

A taxpayer wishing to participate in the Wisconsin voluntary disclosure program completes [Form A-020, Wisconsin Voluntary Disclosure Request](#). The program applies to multiple tax types and provides various benefits. **Note:** If applying for voluntary disclosure for more than one tax type, **each tax type must be specified**. For example, a request for voluntary disclosure for income tax does not cover sales tax.

Benefits of the voluntary disclosure program may include:

- Allowing the taxpayer to remain anonymous while negotiating the voluntary disclosure agreement
- Waiver of negligence penalties (usually 25% of tax)
- Reduction of the 18% delinquent interest rate to 12%. **Note:** Interest on withholding taxes, motor vehicle fuel floor taxes, and intoxicating liquor floor taxes cannot be reduced.
- Reduction in the number of years required to be filed (usually four years)

The following conditions must be met for a taxpayer to qualify for voluntary disclosure treatment:

- No tax returns filed for the period in question
- No registration for the type of tax involved during the period in question
- No contact received from the department within the last six years regarding a registration/filing requirement, assessment/audit assignment, or any requests for the completion of a nexus questionnaire
 - A partner, shareholder, or trust beneficiary is considered to have been contacted if the pass-through entity has been contacted.
 - An owner of a disregarded entity is considered to have been contacted if the disregarded entity has been contacted.

A taxpayer may initially remain **anonymous**. However, once the agreement is complete, they must:

- File all agreed upon prior period returns (usually four prior years). Registering and filing voluntarily may not alleviate past filing obligations.
 - Sales and withholding tax returns are filed on a quarterly basis.
 - Combined corporation franchise or income tax returns must be filed electronically for the current and two prior years.
- Pay all tax, late filing fees, and interest according to the agreement
- File the current and any subsequent returns in a timely manner according to the agreement
- Make books and records available to the department

See the department's [Wisconsin Voluntary Disclosure Program](#) web page for additional information.

My Tax Account: Removing Access

A Master My Tax Account (MTA) user for a business may remove other users' accesses to their accounts by following these steps:

- Log in to [My Tax Account](#) and select "Manage My Profile"
- Select "More..." and "Manage Other Users Access"
- Select the username whose access is being removed

- Select "Deactivate Access"
- Confirm by selecting "Yes"

If a third-party preparer is no longer working with a client, they may remove access to the client's account by following these steps:

- Log in to [My Tax Account](#) and select "Manage My Profile"
- Select "More..."
- Select "Manage My Access" in the "Manage Access" panel
- Locate the client to remove and select "Account Manager" for that client
- Select "Cancel My Access" in the upper right
- Confirm by selecting "OK"

See the department's [Using My Tax Account \(MTA\)](#) common questions for more information.

My Tax Account: Security Reminder and Third-Party Access

Security

- Do not share your [My Tax Account](#) (MTA) username or password with others
- Change your password regularly
- After completing your transactions, always log off and close your web browser

See the department's [Registration/Account Maintenance](#) common questions for more information.

Third-Party Access

If you need access to another person's account, you must create your own MTA account and request permission to access their account. See the department's [Third-Party Preparers](#) common questions for more information.

Note: The top portion of payment vouchers you create for customers and confirmation screen prints you send to your clients include your MTA username. The department does not mask the username because it is an internal identifier for the department and businesses with many MTA users. If you are uncomfortable with a client seeing your MTA username, you can redact it when sharing.

Disclosure of Client Tax Information is Prohibited by Wisconsin Law

Various sections of Wisconsin law prohibit tax preparers from disclosing their client's tax information.

Under sec. [100.57\(2\)](#), Wis. Stats., a tax preparer or entity that employs tax preparers may not disclose to another person information obtained while preparing a tax return without signed consent from the client. Under this law, "tax preparer" does not include a Certified Public Accountant (CPA) or CPA firm licensed in Wisconsin, an attorney who is licensed to practice law in Wisconsin, or an individual who is employed by a corporate trustee, bank, or trust company and who is authorized to provide fiduciary services under state or federal law.

Certified public accountants are prohibited under sec. [Accy 1.301\(1\)](#), Wis. Adm. Code, from disclosing confidential information obtained from their client without the consent of the client or through due process of law. Similarly, lawyer-client privilege under sec. [905.03](#), Wis. Stats., prohibits a lawyer licensed in Wisconsin from disclosing client information with a few exceptions under sec. [905.03\(4\)](#), Wis. Stats.

Finally, secs. [71.78\(1\)](#) and [77.61\(5\)\(a\)](#), Wis. Stats., prohibit any person who receives taxpayer information from the Wisconsin Department of Revenue from redisclosing that tax information to any other person except as provided under secs. [71.78\(4\)](#) and [77.61\(5\)\(b\)](#), Wis. Stats.

Income and Franchise Tax Updates and Reminders

Reminder: Request for Extension to Claim the Veterans and Surviving Spouses Property Tax Credit

One of the requirements for the veterans and surviving spouses property tax credit (vet credit) is that a claim must be filed within four years of the unextended due date of the income tax return for the relevant taxable year for it to be considered valid. However, if you are waiting for the Wisconsin Department of Veterans Affairs to certify your eligibility for the vet credit, you can request an extension with the Wisconsin Department of Revenue (DOR) to keep one or more taxable years open for the vet credit to be timely claimed, even if the four-year statute of limitation to claim the credit were to close before certification. See DOR's [Fact Sheet 1122](#), *Veterans and Surviving Spouses Property Tax Credit, Verification of Eligibility - Extension of Time to Claim Credit*, for information on how to request an extension.

Caution: The extension request is similar to filing a protective claim and must be submitted to DOR within the four-year deadline to file a claim for the vet credit. If you do not request an extension or the request is submitted after the four-year deadline has passed, any claim for the credit on a return filed after the deadline is denied, regardless if other eligibility criteria are met.

For the 2020 taxable year, due to the COVID-19 pandemic, the unextended due date was May 17, 2021, for filing a calendar-year individual income tax return and claiming a credit. If you wish to request an extension to file a claim for the 2020 vet credit, your request must be submitted to DOR by May 19, 2025 (May 17, 2025, falls on a Saturday).

My Tax Account: New Option for Third Parties to Request Access to Individual Income Tax and Homestead Credit Accounts

Third-party preparers may request access to individual income tax and homestead credit accounts in [My Tax Account](#) (MTA). This process is different than requesting access to business accounts. Before a third party requests access to an individual income tax or homestead credit account, the taxpayer/client must have both of the following:

- Their own MTA profile with Master access to the appropriate account type, and
- A valid Power of Attorney (POA), for the third-party preparer, on file with the department

When a third party submits or attempts to submit an access request via MTA, three scenarios can happen:

1. **Client has an MTA profile with Master access and a valid POA on file:** An email is sent to the taxpayer/client (via the email address associated to the MTA profile) with instructions for approving the third-party request.

2. **Client does not have an MTA profile with Master access:** An email is sent to the taxpayer/client with instructions for registering for MTA. This goes to the email address that the third party enters on the "Add Client" screen. The third party cannot complete the access request until the client successfully registers for MTA and adds access to the appropriate account type.
3. **Client has an MTA profile but no valid POA on file:** The third party cannot complete the access request until the taxpayer/client has a valid POA on file with the department. No email is sent to the client in this scenario, the third party must contact their client.

The third party loses access to a client's individual income tax or homestead credit account in MTA if the POA expires or is revoked. When this happens, the department sends an email to the third party to notify them their access has been removed. To reinstate access, the third party must submit a new access request in MTA after the department has a new POA on file.

See the department's [Third-Party Preparers](#) common questions for more information.

Scam Alert: Request for Information Returns and W-2 Scam

Request for Information

There are numerous phishing scams requesting employees, employers, and human resource departments to submit copies of information returns (e.g., Forms W-2 and 1099) by email to resolve tax issues. The department does not send emails requesting copies of information returns and does not request such information be submitted via email due to the personally identifiable information they contain.

The department reconciles millions of information returns annually and may request copies of information returns. These requests are sent by letter through the U.S. Mail and not by email.

The Internal Revenue Service (IRS) has similar policies and a publication specific to businesses about [Safeguarding Taxpayer Data](#).

W-2 Scam

The W-2 scam is one of several scams targeted to obtain large amounts of sensitive tax information from tax preparers, businesses and payroll companies. Employers and tax preparers should immediately report thefts of W-2 information to the IRS and the department.

- **IRS** – Email dataloss@irs.gov and place "W2 Data Loss" in the subject line. Organizations should also file a complaint with the Federal Bureau of Investigation's [Internet Crime Complaint Center](#).
- **Department** – Follow instructions on the department's [Identity Theft](#) web page.

Employers that receive a W-2 scam email, but do not fall victim, should forward the email to phishing@irs.gov.

See the [IRS Tax Scams](#) web page for more information.

Sales and Use Tax Updates and Reminders

Reminder: County Tax Rate Changes for 2025

- **Manitowoc County Adopts 0.5% County Sales/Use Tax** - Effective January 1, 2025
- **Racine County Adopts 0.5% County Sales/Use Tax** - Effective April 1, 2025

See [Wisconsin Tax Bulletin 228](#) (January 2025), page 10, for more information.

Sales Tax Treatment of Credit Card Fees Charged by Retailers

Many retailers charge an additional fee to consumers that pay with a credit card, rather than cash. This additional charge by retailers is part of the sales price of taxable products or services sold to the consumer. Therefore, if the product or service sold is taxable, the additional fee charged to the consumer for using a credit card is taxable. If the credit card is used to pay for both taxable and nontaxable products or services, the retailer may allocate the credit card fee between the taxable and nontaxable purchases and charge tax on the taxable portion of the credit card fee.

Example: Individual purchases taxable prepared food at Restaurant for \$30 at a location with a 5.5% Wisconsin sales tax rate. Individual pays using a credit card. Restaurant charges Individual an additional 3% for using a credit card to pay for the transaction. The total amount of sales tax due is \$1.70, calculated as follows:

Taxable prepared food	\$30.00
Credit card fee (\$30 x .03)	\$ 0.90
Taxable receipts	\$30.90
Sales tax rate	5.50%
Total tax	\$ 1.70

The department contacts retailers who are not properly charging sales tax on such fees. You may inform the department by emailing a copy of a receipt or invoice that shows sales tax is not properly charged on credit card fees to DORSalesandUse@wisconsin.gov.

Sales and Use Tax Guidance for Marketplace Sellers

[Marketplace Seller](#) common questions have been updated on the department's website. The questions and answers have been modified for sec. [77.585\(11\)](#), Wis. Stats., which provides that a marketplace seller may claim a deduction on its Wisconsin sales and use tax return for the amount of sales made through a marketplace provider for which the marketplace seller received notification under sec. [77.523\(2\)](#), Wis. Stats., that the marketplace provider is collecting and remitting the tax.

Collector Coins and Sales Tax Exemption for Precious Metal Bullion

Wisconsin law imposes sales and use tax on coins sold as collectors' items above their face value. Such sales are taxable unless an exemption applies. For example, an exemption applies to the sale, use or other consumption of precious metal bullion.

An item must meet all four of the following requirements to qualify for the precious metal bullion exemption, as provided in sec. [77.54\(74\)](#), Wis. Stats.:

1. Must be in the form of a coin, bar, round, or sheet
2. Must contain at least 35 percent gold, silver, copper, platinum, or palladium
3. Cannot be, in whole or in part, other types of property such as jewelry, works of art, scrap metal, or electronics
4. Must be:
 - Marked with weight, purity, and content, or
 - Minted by a government authority on the basis of weight, purity, and content

A purchaser claiming the exemption must provide a fully completed exemption certificate to the seller. For information on how to complete the certificate see [Wisconsin Tax Bulletin 225](#) (April 2024), page 10. The seller must keep the certificate in its records.

Homeowners and Individuals Selling Short-Term Lodging

A homeowner who sells or furnishes lodging to the public for periods less than one month, must report and pay Wisconsin state sales tax on such rentals. One month means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

In addition to Wisconsin state sales tax, a homeowner making taxable sales of lodging services may also be responsible for reporting and paying the following taxes administered by the department:

- County and/or city sales and use tax (reported on Wisconsin sales and use tax return) – See the department's [Sales Tax Rate Chart](#)
- Premier Resort Area Tax – [Publication 403](#)
- Local Exposition Taxes – [Publication 410](#)

Exception: Sales Made Through a Marketplace Provider

If a marketplace lists or advertises lodging on behalf of the homeowner and also processes the payment, directly or indirectly, from the purchaser of lodging, the marketplace is a marketplace provider. The marketplace provider is responsible for collecting and remitting, to the department, the tax on the entire sales price charged to the purchaser of lodging. The marketplace provider must notify the homeowner that the marketplace provider is collecting and remitting Wisconsin sales or use tax on the taxable sales made through the marketplace provider.

Municipal Room Tax Administered by a Wisconsin Municipality

A person responsible for collecting and remitting Wisconsin sales and use tax to the department is also responsible for collecting and remitting municipal room tax to a Wisconsin municipality if the lodging is furnished in a Wisconsin municipality that imposes a municipal room tax under sec. [66.0615\(1m\)](#), Wis. Stats. Homeowners and their marketplace providers should contact the Wisconsin municipality in which they sell short-term lodging to determine if additional registration is required, the applicable room tax rate, and how to file and pay the municipal room taxes.

Marketplace providers must file [Form RT-200](#), *Marketplace Provider Municipal Room Tax Return*, with each municipality that imposes a municipal room tax.

Resources:

- [Municipal Contact and Room Tax Rate Information](#)
- [Marketplace Providers and Sellers](#) information
- [Occasional Sale Exemption](#) common questions
- Tax law article, *Local Room Tax Changes: Lodging Marketplace License Requirement Expires*, on page 5 of [Wisconsin Tax Bulletin 214](#) (July 2021)

New Qualified Data Center Has Been Certified by the Wisconsin Economic Development Corporation

The Wisconsin Economic Development Corporation (WEDC) has certified another qualified data center in Wisconsin, for Degas LLC. The effective date of the certification is February 18, 2025.

The certification permits contractors and other purchasers to purchase, rent, or lease tangible personal property identified in sec. [77.54\(70\)](#), Wis. Stats., exempt from Wisconsin sales and use tax. The certification is effective February 18, 2025; therefore, eligible purchases made on or after February 18, 2025, for the Degas LLC qualified data center located in Beaver Dam qualify for the exemption.

See the department's [Fact Sheet 2114](#), *Sales and Use Tax Exemption for Qualified Data Centers*, for additional information about what is exempt and how to claim the exemption. For a list of qualified data centers certified by WEDC, visit the department's [Qualified Data Center Exemption](#) common questions.

Excise Tax Updates and Reminders

Reminder: Electric Vehicle Charging Excise Tax Due Dates for Filing and Paying

Electric vehicle charging tax returns and payments are due July 31, 2025, for the period January 1, 2025, through June 30, 2025.

The electric vehicle charging excise tax was effective January 1, 2025. The tax is imposed at the rate of 3 cents per kilowatt-hour on the electricity delivered or placed into the battery or other energy storage device of an electric vehicle by:

- A Level 3 charger of an electric vehicle charging station
- A Level 1 or Level 2 charger installed on or after March 22, 2024, of an electric vehicle charging station

The excise tax does not apply to electricity delivered or placed by a charger of an electrical vehicle charging station located at a residence.

Caution: The excise tax applies to the total kilowatt-hours of electricity delivered or placed by an electric vehicle charging station regardless of whether a registered person charges for the electricity.

Persons required to pay the excise tax must [register](#) with the department and identify their charging station locations. Tax returns are filed and payments may be made electronically using [My Tax Account](#).

See [Wisconsin Tax Bulletin 225](#) (April 2024), page 11, [Wisconsin Tax Bulletin 228](#) (January 2025), page 11, and the department's [Publication 305](#), *Electric Vehicle Charging Tax Information*, for additional information.

Sale of Electronic Vaping Devices in Wisconsin

Wisconsin law provides that manufacturers of electronic vaping devices that sell their devices in Wisconsin must certify their devices to the Wisconsin Department of Revenue no later than July 1, 2025, and annually thereafter, for listing on Wisconsin's electronic vaping device directory. Electronic vaping devices eligible for certification on the directory must comply with sec. [995.15](#), Wis. Stats.

Electronic vaping devices not listed on the directory cannot be sold or offered for sale in Wisconsin. Beginning on September 1, 2025, manufacturers and retailers are subject to a forfeiture of \$1,000 per day for each device not listed on the directory that is sold or offered for sale in Wisconsin. Manufacturers, distributors, and retailers that sell electronic vaping devices not listed on the directory are also engaging in unfair and deceptive trade practice in violation of Wisconsin law (sec. 100.20, Wis. Stats.), and such products may be seized and destroyed.

"Electronic Vaping Device" for purposes of the directory includes all of the following:

- A device that is used to deliver any aerosolized or vaporized liquid or other substance for inhalation, such as an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah (regardless of whether it contains nicotine)
- A component, part, or accessory of such device
- A liquid or other substance that may be aerosolized or vaporized by such device (regardless of whether it contains nicotine)

"Electronic Vaping Device" for purposes of the directory does not include a battery or charger when sold separately, or drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration. Those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Manufacturers may submit their certification for each electronic vaping device by registering and logging into [My Tax Account](#) (MTA). Click "manage vaping devices" when logged into your account in MTA to begin the certification process. Manufacturers must pay a \$500 fee for each device certified to the department, and each device must be certified annually thereafter to remain on the directory.

Retailers and wholesalers must determine if the electronic vaping devices they sell in Wisconsin are certified on the directory. The department will publish the directory on its website in August, 2025. The directory will be made available through the department's [Cigarette, Tobacco, and Vapor Products](#) web page. Prior to the directory being available online, retailers and wholesalers may want to contact the manufacturers of the electronic vaping devices to determine if they will certify their devices for publishing in the directory.

Additional information is found in sec. [995.15](#), Wis. Stats. and the department's [Publication 304](#), *Cigarette, Tobacco, and Vapor Products Tax and Regulatory Information*.

For questions about the directory, email DORExcise@wisconsin.gov or call (608) 266-6701.

Unclaimed Property Updates and Reminders

Matching Program Continues to Return Millions of Unclaimed Property to Owners

The department began matching unclaimed property owners with income tax records in 2015.

Since the program started, approximately \$62.3 million in unclaimed property has been returned to more than 359,000 owners. This year's matching program has identified 31,028 owners with approximately \$9.9 million in refund checks to owners.

How the Matching Program Works

The department matches unclaimed property information reported (e.g., social security numbers) with income tax records. When a match is made, the department first offsets any debts before paying the unclaimed property to the owner. Then the department mails one of two different notices to the individual depending on the value of unclaimed property.

Notice of Claim Refund – Unclaimed Property (if the amount payable is \$2,000 or less)

- A check is attached to the notice when there is a refund payable
- The notice may include:
 - An itemized list of the property refunded to the owner
 - Any interest paid and the specific property to which the interest relates
 - The amount and type of debts, if any, that were paid from the proceeds of the unclaimed property
 - Contact information for questions

Action Required – Claim your Unclaimed Property (if the amount payable is more than \$2,000)

- The notice lists items and amounts of unclaimed property
- The owner must follow the instructions in the notice to file a claim for the property
- Upon approval of the claim, the department sends the refund to the owner

Department Contact Information

Persons receiving one of these notices are encouraged to visit the department's [Unclaimed Property](#) web page to search for additional unclaimed property they may have.

Call: (608) 264-4594 (Mon-Fri, 7:45 a.m. - 4:30 p.m.)

Email: DORUnclaimedProperty@Wisconsin.gov

Enforcement Report

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes. To report tax fraud, go to www.revenue.wi.gov and click the "Report tax fraud" link under Quick Links.

Summarized below are recent developments from the department's investigations.

Brown County Resident Sentenced for Tax Crimes and Other Charges

On March 4, 2025, Quashone D. Wiley of Green Bay was sentenced to a maximum term of three years in prison and three years extended supervision for filing a fraudulent Wisconsin individual income tax return with the intent to obtain a fraudulent refund.

On January 18, 2023, Wiley was charged with the following:

- | | |
|---------------------------------------|---------------|
| • Forgery-uttering | Felony H |
| • Misappropriate ID info-obtain money | Felony H |
| • Misappropriate ID info-obtain money | Felony H |
| • Credit card-fraudulent use | Misdemeanor A |
| • Credit card-fraudulent use | Misdemeanor A |
| • Bail jumping | Misdemeanor A |

On February 23, 2024, Wiley was charged with the following:

- | | |
|---|---------------|
| • Possession of narcotic drugs | Felony I |
| • Possess firearm-convicted of a felony | Felony G |
| • Bail jumping | Felony H |
| • Disorderly conduct | Misdemeanor B |
| • Carry concealed weapon | Misdemeanor A |
| • Resisting or obstructing an officer | Misdemeanor A |
| • Resisting or obstructing an officer | Misdemeanor A |

On February 26, 2024, Wiley was charged with the following:

- | | |
|-------------------------------------|---------------|
| • Fraud/rendering income tax return | Felony H |
| • Identity theft | Felony H |
| • Knowingly submit false documents | Misdemeanor U |

As part of the plea deal, all three cases were combined for sentencing.

For the 2021 tax year, Wiley electronically submitted a self-prepared tax return to the department. The return reported wages of \$75,000 from QPS Employment Group and withholding tax of \$15,000. The return resulted in a refund of \$11,574. The refund was flagged due to the large amount and was not paid out.

Records provided by QPS Employment Group show that Wiley did not work for them during 2021; therefore, Wiley used their company information without their consent in preparing the fraudulent Form W-2 (W-2).

Wiley contacted the department several times inquiring about the refund and provided a copy of a fraudulent W-2. On July 28, the department sent Wiley a letter stating the department was unable to verify the W-2 filed with the return. On August 3, 2022, Wiley called three times inquiring about the letter and asking how to upload a copy of the W-2. Wiley claimed to have received a copy of the W-2 from the employer through email and intended to take a picture and upload the fabricated document for the department.

The charges are the result of an investigation and referral of charges by investigators from the department's Office of Criminal Investigation and the Brown County District Attorney's Office.

Iowa County Resident Pleads Guilty to Filing a Fraudulent Income Tax Return Related to Unreported Embezzlement Income

Kyle Carden plead guilty in Iowa County Circuit Court in February to one felony count of filing a fraudulent Wisconsin income tax return. Carden was charged with two additional counts of filing fraudulent Wisconsin income tax returns, but those charges were dismissed as part of a plea agreement.

Carden was charged on October 8, 2024. According to the criminal complaint, Carden failed to report embezzlement income of \$23,859 and other self-employment income of \$33,441, for a total of \$57,300 of unreported income. By failing to report the income, Carden underreported Wisconsin income tax liability by an estimated \$3,238. In the embezzlement scheme, Carden made 33 credit card charges to a personal point-of-sale system using a previous employer's credit card. Carden changed the company name on the point-of-sale system to names similar to vendors used by the previous employer.

The department reminds taxpayers and return preparers that all income is taxable income unless an exclusion applies. There is no exclusion for income received from illegal activities.

The department would like to thank the Iowa County District Attorney's Office for prosecution of this case. The department's Office of Criminal Investigation Fraud Unit investigated the theft and fraudulent tax returns.

Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (Commission) and Wisconsin Court decisions.

Individual Income Tax

Farming Activity – Not Engaged in For Profit

Daryl & Chrissann Jaeger v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 23, 2025).

The issue in this case is whether losses from farming activities were nondeductible losses from an activity not engaged in for profit under sec. [183](#), of the Internal Revenue Code.

The department disallowed the losses that the taxpayers claimed in connection with the farming activity.

The taxpayers had other earned income; the couple's W-2 wages were over \$225,000 for each year covered in the audit, 2018 through 2020. The taxpayers began the farming activities in 2006, which they characterized as cattle feeding and cattle raising. From 2006 through 2020, the farming activity never reported a profit.

Although Daryl Jaeger testified to growing up on a farm and coming from a farming family, Daryl's primary employment is in engineering. The taxpayers did not provide any documentation supporting their testimony that they consulted an agronomist and did not provide any evidence that they took any courses or programs to increase the profitability of the cattle activities. There was no separate business bank account; the taxpayers paid all expenses from their personal accounts. The taxpayers did not keep contemporaneous, detailed records of the hours worked, their use of supplies, or even the number of cattle they owned.

The Commission analyzed the nine factors in the federal regulations (Treas. Reg. § [1.183-2](#)) to determine whether the activity was engaged in for profit:

1. **Manner in which the taxpayers carry on the activity:** Taxpayers did not maintain complete and accurate books and records and commingled business and personal funds. Taxpayers did not have a business plan and used a balance sheet, not an income statement, to determine the "profitability" of the enterprise.
2. **The expertise of the taxpayers or their advisors:** The taxpayers have some experience with cattle farming and claimed that they consulted with an agronomist. However, they provided no documentary evidence that they consulted an agronomist or that they did any research about cattle farming methods, types, profitability, or any other aspects of the business side of cattle farming. While the taxpayers are knowledgeable about cattle and the routine work needed to raise them, the taxpayers did not demonstrate knowledge about how to operate a cattle farming business.
3. **The time and effort expended by the taxpayers in carrying on the activity:** Although Daryl Jaeger spent significant time in the activity, Daryl maintained full-time employment and could only work on the cattle enterprise during evenings, weekends, and paid-leave time.
4. **Expectation that assets used in the activity may appreciate in value:** There was no history of selling the cattle for a profit. The taxpayers did not provide adequate records of the cattle owned and the costs related to raising them, so they could not know if the income would exceed the expenses. Although Daryl Jaeger stated they would be able to sell the equipment for a profit, this did not support the claim to be in the business of cattle farming. Selling the equipment for a profit would be relevant if the taxpayer was in the equipment sales business.
5. **The success of the taxpayer in carrying on other similar or dissimilar activities:** Daryl Jaeger was successful in farm-related engineering work, but this was not sufficient to overcome fifteen years of unprofitable cattle farming activities.
6. **The taxpayers' history of income or losses with respect to the activity:** Taxpayers claimed that they changed the business model in 2017 or 2018, but the kinds and amounts of expenses, and other information provided, did not support a changed business model.
7. **The amount of occasional profits, if any, which are earned:** Taxpayers have never had a profit from this activity in any of the 15 years operating.
8. **The financial status of the taxpayer:** The taxpayers had significant income from other sources. They claimed a significantly larger farming loss for the same year their income from other sources was significantly higher.
9. **Elements of personal pleasure or recreation:** Some of the expenses deducted were used to support Daryl Jaeger's uncle's business, not the taxpayers' business. It appeared the primary motive for the taxpayers' farming activity was to help the uncle retain ownership of the farm so that the taxpayers could eventually inherit the farm.

After applying the nine factors to the facts and circumstances of this case, the Commission ruled that the taxpayers did not operate their farming activities in a business-like manner. Each of the factors was neutral or against the taxpayers' position. Accordingly, the department's assessment was upheld.

The taxpayers did not appeal this decision.

Exclusion from Income of Health Insurance Payments and Deductibility of Business Losses

Paul Komarck v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 13, 2025).

The issues in this case are whether the taxpayer could exclude payments of qualified health insurance premiums from their income under sec. [402\(l\)](#), of the Internal Revenue Code (IRC), and the deductibility of business expenses and losses from an activity not engaged in for profit under sec. [183](#), IRC.

The department audited the taxpayer's 2017 through 2020 Wisconsin individual income tax returns and issued a Notice of Amount Due (assessment) in December 2021, as a result. The taxpayer appealed the assessment in January 2022. The department denied the taxpayer's appeal in April 2022, for not responding to the department's requests for additional information. The taxpayer filed a timely petition for review of that denial with the Commission.

Health Insurance Premiums

For each year of 2017 through 2020, the taxpayer excluded \$3,000 of retirement income based on the alleged payment of qualified health insurance premiums under sec. 402(l), IRC. Paragraph (5)(A)(i)* of that provision required payments be made directly from the employee's retirement plan to the provider of the health plan to be eligible for the exclusion. The department disallowed the exclusion because the taxpayer did not provide adequate documentation of qualifying payments.

For 2017, the taxpayer was covered under their partner's health plan and did not pay premiums. For the other years, the taxpayer paid the health insurance premiums from their personal account, with the exception of one payment in December 2020 of \$666 from the taxpayer's retirement plan to the health insurance provider. The taxpayer made various arguments as to why they should be allowed an exclusion for their personal payment of the health insurance premiums. However, the Commission found none of the arguments to be persuasive.

* Section 328(a) of Division T (SECURE 2.0 Act of 2022) of Public Law [117-328](#) amended this provision so payments made by a taxpayer directly to the health plan provider also qualify for the exclusion. This amendment applies to retirement plan distributions after December 29, 2022. As such, it does not affect the adjustments made in the periods covered by the assessment.

Business Losses

For 2017 through 2020, the taxpayer reported annual business losses on federal Schedule C for Komarck Constr Consulting. The business losses were attributable to various expenses, including depreciation. The department disallowed the business losses because the taxpayer did not adequately show that the activity was engaged in for profit. For more information on the factors affecting a determination under sec. 183, IRC, see the preceding litigation report in this bulletin, *Farming Activity – Not Engaged in For Profit*.

The taxpayer conceded that they could not rebut the department's assertions and accepted the disallowance of all business expenses except for depreciation. The taxpayer asserted the depreciation should be allowed since it is a mandatory expense to be claimed by the business owning the property.

The Commission disagreed with the taxpayer's conclusion since the concession meant there was no legitimate business that could claim the depreciation as an expense and, secondly, the taxpayer did not provide any information to verify how the expense was calculated on the returns.

Ultimately, the Commission ruled that the taxpayer was not allowed any exclusion from income for qualified health insurance premiums except for the \$666 payment in 2020 that was identified by the department and no business expenses or losses were deductible for Komarck Constr Consulting.

The taxpayer did not appeal this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of April 30, 2025: chs. 66, 71, 77, 100, 171, 177, 905, and 995, [Wis. Stats.](#), and chs. Tax 1, 2, 3, and 11, and Accy 1.301(1), [Wis. Adm. Code](#). Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

Public Comments

The public may [submit comments on guidance documents](#) at any time.